IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.01.2002

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THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN

CRL.R.C.NO.366 of 1999 and CRL.R.C.No.367 of 1999 and CRL.R.C.No.792 of 1999 and CRL.R.C.No.793 of 1999 AND CRL.M.P.NO.14

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Md.Yahia ..Petitioner in
Partner, M/s.D.S.Velan & Co. Crl.R.C.366/99
No.17, R.Veeraswamy Pillai St., ..Respondent in
Second Floor, Crl.R.C.793/99
Periamet, Ms-600 003

Dhanapal ..Petitioner in
Partner, M/s.D.S.Velan & Co. Crl.R.C.367/99
No.17, R.Veeraswamy Pillai St., ..Respondent in
Second Floor, Periamet, Ms-600 003 Crl.R.C.792/99

State represented by ..Petitioner in
Superintendent of Police Crl.R.C.792/99 &
CBI, EOW, Chennai 793/1999 and
..Respondent in
Crl.R.C.366/99 &
367/1999

Prayer in Crl.R.C.No.366/1999: Revision against the order dated 19.0 3.99 in Crl.M.P.No.592/1998 in E.O.C.C.No.154/1998 on the file of the Additional Chief Metropolitan Magistrate, E.O.1, Egmore, Chennai.

Prayer in Crl.R.C.No.367/1999: Revision against the order dated 19.0 3.1999 in Crl.M.P.No.590/1998 in E.O.C.C.No.154/1998 on the file of the Additional Chief Metropolitan Magistrate, E.O.1, Egmore, Chennai.

Prayer in Crl.R.C.No.792/1999: Revision against the order dated 19.0 3.1999 in Crl.M.P.No.590/1998 in E.O.C.C.No.154/1998 on the file of the Additional Chief Metropolitan Magistrate, E.O.1, Egmore, Chennai.

Prayer in Crl.R.C.No.793/1999: Revision against the order dated 19.0 3.1999 in Crl.M.P.No.592/1998 in

E.O.C.C.No.154/1998 on the file of the Additional Chief Metropolitan Magistrate, E.O.1, Egmore, Chennai.

! For Petitioner in : Mr.C.Mani Shankar
Crl.R.C.366 & 367 :

For Petitioner in : Mr.N.Ranganathan
Crl.R.C.792 & 793 : Spl.P.P. For CBI

^ For Respondent in : Mr.N.Ranganathan
Crl.R.C.366 & 367 : Spl.P.P. for CBI

For Respondent in : Mr.C.Mani Shankar
Crl.R.C.792 & 793 :

: ORDER

These four revisions arise under the following circumstances:

There is one calendar case namely, E.O.C.C.No.154/1998 on the file of the Additional Chief Metropolitan Magistrate, E.O.1, Egmore, Chennai. C.B.I is the complainant therein. A final report was filed by them before that court alleging offences under sections 120-B read with 420, 468, 471 and 511 I.P.C and section 114 read with section 132 of the Customs Act. The revision petitioner in the first revision is A4 in that calendar case while the revision petitioner in the second revision is A3 in the said calendar case. The revision petitioner in each of the last two revisions is the Investigating Agency itself and the respondent in each of those two revisions is A3 and A4 respectively. A3 and A4 filed two separate applications bearing Crl.M.P.Nos.5 90/1998 and 592/1998 in that calendar case to discharge them from the proceedings in entirity. As far as A3 and A4 are concerned, the learned Judge on merits found that the materials available on record show their involvement for violation of section 132 read with section 114 of the Customs Act only and accordingly maintaining the proceedings against them only in respect of that offence, discharged them in respect of all other offences falling under the Indian Penal Code referred to earlier. Aggrieved over the continuance of the proceedings against them for violation under the Customs Act referred to above, A3 and A4 are before this court in the two revisions referred to earlier. Challenging the discharge of the respective accused in respect of the offences falling under the Indian Penal Code, the Investigating Agency is before this court in the other two revisions.

Heard Mr.C. Mani Shankar learned counsel appearing for A3 and A4 and Mr.N. Ranganathan learned Special Public Prosecutor for C.B.I appearing for the Investigating Agency.

2. The undisputed facts that are available on record are as follows:

A1 is the proprietary concern and A2 is the proprietor of the same. A1 and A2 are the exporters. A3 and A4 are the partners of a company called M/s.D.S.Velan & Co. The said Velan & Co. is a customs house clearing agent having been issued a licence under Customs House Agents' Licensing Regulations, 1984, hereinafter called the "Regulations". The exporter presented the documents of shipping to the Customs Authorities/Port Authorities through their customs house agent namely Velan & Co. represented by A3 and A4; on verification it was found that the goods actually meant to be exported do not tally with the description of the same in the export documents and the documents presented for export through the customs house agent contain the counter signature of A4 as the customs house clearing agent". The case of the prosecution in short is that by attempting to export goods, which had been wrongly described in the export documents, the description of which as it is would enable the exporter to claim draw back concessions, the exporters are guilty of attempting to cheat as well as file fabricated and forged documents. Section 132 of the Customs Act deals with false declaration punishable under section 114 of the said Act. There is no dispute that the declaration to be given along with the export documents should be given only by the exporter as mandatorily directed under section 50 of the Customs Act. Prima facie the materials show that the goods attempted to be exported do not tally with the description contained in the export documents. Probably that is the reason why A1 and A2 had not initiated any proceedings at all either to discharge them or to have any other remedy available in law to them at this stage. In fact they are facing trial.

3. I went through the Regulations referred to above to find out what are the duties of a customs house clearing agent. Regulation 14 deals with the various obligations to be performed by the customs house agent namely, Velan & Co. represented by A3 and A4. No where the said Regulation calls upon the customs house agent to verify the correctness of the declaration made by the exporters before they sign the export documents. Under the Regulation referred to above, no exporter can have a

direct access into the Port/Customs area for filing any document of shipping and the same has to be necessarily routed only through their customs house agent. There is also no dispute that Velan & Co. represented by A3 and A4 are their customs house agent. Statutorily namely, under the Regulations referred to above, a customs house agent has to necessarily counter sign in the shipping document containing the declaration made by the exporter. The customs house agent is not in the position of an expert to verify and test the nature of the goods to be exported or to find out whether it tallies with the description found in the export documents. By counter signing the shipping document, the customs house agents are discharging their duties as imposed on them under the Regulations referred to above. In fact they are all licensed under the above referred to Regulations and it is they, who personally or through their servant (authorised by the customs house officials) can act on behalf of the exporters. There is also no dispute that except counter signing in the export documents by the customs house agent namely, Velan & Co. represented by A3 and A4, they have not done anything else at all and there is not even an iota of material on record collected by the Investigating Agency during investigation that they have conspired with the exporter either to cheat or to forge or fabricate any document. At the risk of repetition, I place it on record that except the counter signature of A4 in his capacity as the partner of the customs house agent in the export documents, there is no other material.

4. In the light of the facts noted above, I have no doubt at all in my mind that there is no prima facie material against A3 and A4 to proceed against them even for the violation of section 132 read with section 114 of the Customs Act. Under section 132 of the Customs Act, an offence is made out, if a person signs etc..... in any declaration or statement or document in the transaction of any business relating to the customs knowing or having reasons to believe that such declaration is false in any material particular ..... Inasmuch as the declaration mentioned under this section is a declaration to be made by the exporter under section 50 of the Customs Act, if at all anybody can be held responsible for any mis-declaration, prima facie it must be only the declarant namely, the exporter, who can be proceeded with. Of course, if any persons other than the exporter are also shown to have consciously connected with such mis-declaration, then they can also be proceeded with under the relevant provisions of law. As already stated, in the absence of any statutory duty cast

upon the customs house agent to verify the correctness of the declaration made by the exporter and then only sign, the mere signing by the customs house agent in the export documents, which contain the declaration of the exporter, would not by itself attract an offence punishable under section 132 of the Customs Act. The materials collected by the Investigating Agency during investigation do not show that the customs house agent had any knowledge that the particulars furnished by the exporter are false.

5. Under these circumstances, I am inclined to pass the following order:

Crl.R.C.Nos.366 & 367/1999 are allowed and A3 and A4 are discharged from C.C.No.154/1998 on the file of the Additional Chief Metropolitan Magistrate, E.O.1, Egmore, Chennai even in respect of the offence punishable under section 132 read with section 114 of the Customs Act. Consequently Crl.R.C.Nos.792 & 793/1999 are dismissed. Crl.M.P.Nos.1478 & 1479/2001 and Crl.M.P.Nos.2875 to 2878/1999 are closed.

Vsl 31.01.2002
Index:Yes/No

To

1.The Additional Chief Metropolitan Magistrate
E.O.1, Egmore, Chennai

2.The Superintendent of Police
C.B.I., E.O.W., Chennai

3.The Public Prosecutor, High Court, Madras

vsl
R.BALASUBRAMANIAN, J

CRL.R.C.NOS.366,367,792 &
793/1999 & CRL.M.P.NOS.
1478 & 1479/2001 & 2875
TO 2878 OF 1999

31.01.2002